LEGAL NEWS IN BRIEF

News in a Flash for Subrogation and Insurance Professionals

VOLUME 21, ISSUE 2

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GOVERNOR'S COVID ORDERS ADDS EXTRA TIME FOR NY STATUTES OF LIMITATIONS

During the COVID crisis, Governor Cuomo issued several Executive Orders "tolling" statutes of limitation and other court-related time limits. Though there is some debate on this issue, the only two cases known to us to address the issue have construed these Orders to constitute an actual toll of SOLs, meaning that days included in the Orders do not count toward the running of a SOL, rather than merely suspending the expiration of SOLs until the Orders expired.

In Brash v. Richards, 2021 NY Slip Op 03436 (June 2, 2021), the Appellate Division, 2nd Department, held that the time to file an appeal had been tolled. In Foy v. State of New York, 2021 NY Slip Op 21047 (February 16, 2021), the Court of Claims found that the SOL for a wrongful termination claim against the State had been tolled.

Thus, it appears that in calculating any time limits including SOLs, the period between March 20, 2020 (March 7 according to the Foy case, although we do not see any provision in Governor Cuomo's March 7 orders that tolled SOLs) and November 3, 2020 simply do not count. Therefore, causes of action that arose prior to March 20 and did not expire prior to that date have an extra 229 days added to their SOLs. Further, SOLs for causes of action that arose on or after March 20 only began to run on November 4, 2020, so that, for instance, the three-year statute of limitations for a negligent act on April 1, 2020 will have its statute of limitations run on November 4, 2023.

We highly recommend that litigants not rely on this statute tolling except when necessary. However, if one discovers a claim that might appear to be beyond its SOL, it will be important to consider whether the COVID orders add more time to the SOL. ■

BUSINESS INCOME LOSS

Benamax Ice, LLC v. Merch. Mut. Ins. Co.
U.S. Dist. Ct., D.N.J.
2021 U.S. Dist. LEXIS 59327
(March 29, 2021)

A NJ restaurant unsuccessfully sued for business income loss coverage under its policy with Defendant. Plaintiff asserted losses as a result of state and federal government orders which mandated suspension of in-person dining due to the ongoing pandemic. The policy in question included coverage for loss of income caused by action of civil authority that prohibits access to the premises. However, Defendant successfully obtained dismissal of the action, invoking the exclusion for "loss or damage caused directly or indirectly by…[a]ny virus, bacterium, or other microorganism that induces or is capable of inducing physical illness, distress, or disease." ■

DEALERSHIP POLICY MUST COVER ALL PERMISSIVE USERS; POLICY REFORMED TO MINIMUM COVERAGE FOR DEALERSHIPS

Huggins v. Aquilar
NJ Supreme Court
246 N.J. 75
A-78-19
(April 21, 2021)

The NJ Supreme Court struck down a clause in a car dealership's automobile policy which excluded

coverage for dealership customers as long as they had other available insurance. N.J.A.C. 13:21-15.2(*l*) mandates that auto dealerships must possess $100K/250K liability coverage "covering all vehicles owned or operated…at his or her request or with his or her consent." The Court construed a clear intent to insure all permissive users.

The Court determined that prior case law was unclear on this point, and therefore required coverage of only $100K/250K, the minimum required for dealerships, rather than the policy's $1 million face value. Going forward, the Court held, insurers are on notice that such clauses are invalid, and therefore a carrier's full policy may apply in future cases involving similar escape clauses. ■

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TRIP AND FALL

Temiz v. Patel
NJ Appellate Division
2021 N.J. Super. Unpub. LEXIS 604
(April 12, 2021)

Plaintiff sued for injuries sustained from tripping over a raised portion of the sidewalk in front of a residential property. One year before the accident, the Borough had removed a tree on Defendants' property because the sidewalk at issue was located ten feet from the curb and the tree was deemed a "street tree." Plaintiff asserted that roots emanating from that removed tree caused the sidewalk to become elevated and uneven. Defendant had moved into the property one month before the accident.

The Appellate Division upheld dismissal of the case. Generally, residential property owners (unlike commercial property owners) have no duty to maintain the sidewalks adjacent to their land as long as they do not affirmatively create a condition that makes the sidewalk dangerous. Plaintiff failed to show that Defendants – or any other identified party in privity with Defendants – planted the tree to create an artificial condition. ■

TIMELY NOTICE OF CLAIM

Cordova-Bell v. NYC Transit Auth.
NY Supreme Court (Bronx Cty.)
2021 NY Slip Op 50287
(April 6, 2021)

Plaintiff sustained injuries in a collision with a City fire truck on December 6, 2011. On March 5, 2012, she served a Notice of Claim upon the NYC Fire Department in Brooklyn. The following day, the Department sent Plaintiff's attorney a letter returning the notice of claim, stating that per Gen. Mun. Law 50-e, it was not authorized to accept service of said notice and suggested that it be properly filed with the Comptroller of the City of New York. However, the Comptroller's Office informed said attorney by letter dated March 9, 2012 that they acknowledged receipt of the claim and assigned it a claim number. Thereafter, a 50-h hearing proceeded and Plaintiff filed a Summons and Complaint.

Defendant filed a motion to dismiss, which the Supreme Court denied. Although the Notice of Claim was erroneously served on the Fire Department, the Department is not a separate entity but merely an agency of the City. Moreover, the proper person who is charged with the defense of the action acknowledged receipt of said claim (which Plaintiff relied upon), scheduled and participated in the 50-h hearing and continued litigating this matter for over seven years. ■

OFFICE UPDATE

Our office welcomes **Amy Sue Goldenberg** as a new litigation Associate. Upon graduation from the Jacob D. Fuchsberg Law Center (Honors Program), Ms. Goldenberg clerked for the Honorable Dennis F. Carey III, P.J.cv., at Superior Court of New Jersey, Essex Vicinage. In addition, Ms. Goldenberg interned for the late Honorable Leonard D. Wexler, at the Eastern District of New York.

Our office also welcomes our new paralegal **Alexandra Scharf**, a recent graduate of Binghamton University who has contributed articles to various publications and also worked at an accounting firm. ■

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